

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:21-cv-00170-MR-WCM**

**NOC PROPERTIES, LLC;
NANTAHALA OUTDOOR CENTER,
LLC; NOC ADVENTURE, LLC; NOC
RETAIL, LLC; and DUKE ENERGY
CAROLINAS, LLC,**

Plaintiffs,

vs.

**GREAT SMOKY MOUNTAINS
RAILROAD, LLC; U.S. DEPARTMENT
OF AGRICULTURE; U.S. FOREST
SERVICE; N.C. DEPARTMENT OF
TRANSPORTATION; and SWAIN
COUNTY,**

Defendants.

ORDER

THIS MATTER is before the Court on the following: the Defendant North Carolina Department of Transportation's Motion to Dismiss [Doc. 11]; the Defendant Swain County's Motion to Dismiss [Doc. 15]; the Plaintiffs' Motion to Modify the Swain County Court's April 1, 2021 Order [Doc. 17]; the Plaintiffs' Second Motion to Modify the Swain County Court's April 1, 2021 Order [Doc. 24]; and the Magistrate Judge's Memorandum and Recommendation [Doc. 31] regarding the disposition of those motions.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the above-referenced motions and to submit a recommendation for their disposition.

On December 14, 2021, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the parties' motions. [Doc. 31]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has now expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation regarding the pending motions.

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 31] is **ACCEPTED**.

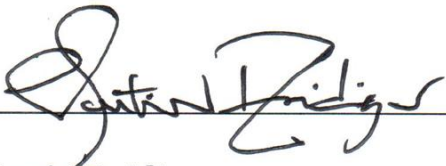
IT IS FURTHER ORDERED that the Defendant North Carolina Department of Transportation's Motion to Dismiss [Doc. 11] and the

Defendant Swain County's Motion to Dismiss [Doc. 15] are **GRANTED**, and the Plaintiffs' claims against these Defendants are **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Plaintiffs' Motions to Modify the Swain County Court's April 1, 2021 Order [Docs. 17, 24] are **DENIED AS MOOT**.

IT IS SO ORDERED.

Signed: January 5, 2022

A handwritten signature in black ink, appearing to read "Martin Reidinger", is written over a horizontal line.

Martin Reidinger
Chief United States District Judge

